

**FIVE YEARS FROM THE FLOOD: OVERSIGHT OF  
THE ARMY CORPS' MANAGEMENT OF THE  
MISSOURI RIVER AND SUGGESTIONS FOR IM-  
PROVEMENT**

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**FIELD HEARING**

BEFORE THE

SUBCOMMITTEE ON SUPERFUND, WASTE  
MANAGEMENT, AND REGULATORY OVERSIGHT

OF THE

COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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MARCH 31, 2016—NORTH SIOUX CITY, SD  
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# **FIVE YEARS FROM THE FLOOD: OVERSIGHT OF THE ARMY CORPS' MANAGEMENT OF THE MISSOURI RIVER AND SUGGESTIONS FOR IMPROVEMENT**

**THURSDAY, MARCH 31, 2016**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON SUPERFUND, WASTE MANAGEMENT,  
AND REGULATORY OVERSIGHT,  
*North Sioux City, SD.*

The subcommittee met, pursuant to notice, at 1:05 p.m. in the North Sioux City Council Chambers at City Hall, Hon. Mike Rounds (chairman of the subcommittee) presiding.

Present: Senator Rounds.

## **OPENING STATEMENT OF HON. MIKE ROUNDS, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator ROUNDS. Good afternoon. The Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight is meeting today to conduct a field hearing entitled "Five Years from the Flood: Oversight of the Army Corps' Management of the Missouri River and Suggestions for Improvement." I would like to thank our witnesses for being with us today, and I look forward to hearing your testimony.

The United States Army Corps of Engineers is responsible for managing the Missouri River to meet the needs of both the Corps and the surrounding communities. In order for this to be successful, management of the river should always be done with extensive communication among stakeholders and a well founded understanding of the needs of State and local governments, agriculture, recreation and economic interests, all of which depend on the proper management of the Missouri River.

In 2011 record setting rains, unusually moist soil conditions, and melting snow from a near-record setting snowfall in the Rocky Mountains and Northern Plains States combined to form a perfect storm that led to catastrophic flooding all along the Missouri River basin.

From May through August extensive flooding caused major damage on residences, infrastructure, businesses and agriculture in the basin States of South Dakota, North Dakota, Iowa, Nebraska, Missouri, Montana and Kansas.

The flood caused more than \$2 billion in damages and resulted in five fatalities. Four thousand homes were flooded. Roads were

destroyed, and agricultural land was ruined. Entire communities were under attack from the 2011 flood, largely left to fend for themselves. The Federal Emergency Management Administration, or FEMA, issued disaster declarations in each State in this region.

In our State capital of Pierre and neighboring Fort Pierre, residents were given less than 1 week to prepare for what would be one of the worst floods in 60 years. After the flood, the city's streets, sewage system, storm sewers, parks and electrical systems suffered unprecedented damage that cost millions of dollars to repair. The recovery took months. Citizens are still paying for the damages.

When the floodwaters had receded and life began to return to normal, the next step was to make sure that any and all measures were taken to make certain this would not happen again.

In 2014 Government Accountability Office reported—report concluded that improving existing hydrologic data and collecting new soil moisture, plains snowpack, and archeological flood and drought data could assist the Corps in making future release decisions and in improving long-term forecasting models. Accordingly a 2014 Water Resources Reform bill, which is commonly referred to as WRRDA, authorized the Army Corps to coordinate with various government agencies to create a soil moisture and snowpack monitoring network in the Upper Missouri River Basin.

Since the flood we have also been confronted with several other issues involving the Army Corps' management of the Missouri River. In 2008 the Army Corps issued Real Estate Guidance Policy Letter Number 26. This directive required municipal and industrial water users from the Missouri River Mainstem Reservoirs to acquire a water storage contract from the Corps before the Corps would issue an access easement for a pump site. Since the issuance of this guidance policy the Corps has been seemingly unable or unwilling to issue access easements to South Dakotans seeking to utilize water from the Missouri.

Additionally, the Corps has been undertaking surplus water studies and engaging in a rulemaking effort to standardize how the Corps will charge citizens for surplus water storage. The 2014 WRRDA bill prohibited the Corps from charging a fee for surplus water for 10 years. This prohibition should be permanent. South Dakotans should not be required to pay a fee of any kind for using water from the Missouri River.

Proper management of the Missouri River is vital to life in the Midwest. We depend on the Missouri River not only for recreation, but for agriculture and irrigation, shipping and hydroelectric power. The Missouri River is vital to our livelihood and to our economy.

It has now been nearly 5 years since the flood. Today we will be hearing testimony from both the U.S. Army Corps of Engineers and State and local stakeholders regarding the Corps' management of the Missouri River. We will be exploring what the Corps is doing right, what can be improved upon, and how Congress can help get the Corps and the communities the resources they need to manage this vital resource. We will also offer suggestions on how the Corps' management can be improved in order to prevent future flooding

and better meet the needs of both the surrounding communities and the Corps.

Each witness will have approximately 5 minutes to present their testimony, and I will then follow up with questions to the witnesses.

I'd like to again thank our witnesses for being with us today, and I look forward to hearing all of their testimonies.

This hearing has two panels. We'll begin with our first panel today, and Mr. Dave Ponganis is the Director of Programs, the Northwestern Division of the U.S. Army Corps of Engineers. Mr. Ponganis, whenever you're ready you may begin your 5 minutes of testimony. Once again, we appreciate your being here today.

**STATEMENT OF DAVID PONGANIS, PROGRAMS DIRECTOR,  
NORTHWESTERN DIVISION, U.S. ARMY CORPS OF ENGINEERS**

Mr. PONGANIS. Thank you, Chairman Rounds. I am Dave Ponganis, Programs Director of Northwestern Division of the U.S. Army Corps of Engineers. I am pleased to be here today to discuss the efforts of the Corps in the Missouri River basin to reduce the risk of flood damage during and after the Missouri River flood of 2011.

The Missouri River Mainstem Reservoir System is comprised of six multipurpose dams and reservoirs, which include hydroelectric power plants and recreational areas; levees downstream along the mainstem of the Missouri River and a 735-mile navigation channel extending from Sioux City, Iowa, to the mouth near St. Louis, Missouri. The six dams on the mainstem of the Missouri River form the largest system of reservoirs in the United States.

The Corps is charged with responsibly managing this complex and extensive system for eight congressionally authorized purposes: Flood control, navigation, hydropower, municipal and industrial water supply, water quality control, recreation, irrigation, and fish and wildlife. The Missouri River Master Manual is the Corps' manual that guides the operating regime of these reservoirs under a wide range of water conditions consistent with those authorized purposes. In addition, operation of the system must also comply with other applicable Federal statutory and regulatory requirements, including the Endangered Species Act.

Cycles of flooding and drought have always been a major part of the Missouri River Basin hydrology. The 2011 flood was the result of unprecedented hydrologic events. Following a wet fall of 2010, heavy snow accumulated on the upper plains of Montana, Wyoming, North and South Dakota. Mountain snowpack was just slightly above average most of the winter but surged late in the season and peaked much above average in early May.

But it was the unprecedented record rainfall in May and June over much of Montana, North Dakota and South Dakota that, when combined with the runoff from the plains and mountain snowpack, resulted in the flood event of 2011. Runoff above Sioux City, Iowa, totaled 62 million acre-feet compared to a normal 25 million acre-feet, more than double the average and the highest on record, requiring record releases from all six mainstem dams. Releases from Gavins Point Dam were maintained between 150,000 cubic feet per second and 160,000 from mid-June through mid-Au-

gust, more than double the previous record release of 70,000 cubic feet per second.

While much damage occurred in the basin during this flood, the Missouri River Mainstem Reservoir System, including the Federal and non-Federal levees, along with the response actions taken by Federal, State, and local agencies, and private citizens both before and during the flood, provided substantial benefits. Without them the damages and safety risks would have been much greater. Important repairs have been completed since then. There are still a few to be done that we're working on right now.

During the Missouri River flood of 2011, the Corps expended approximately \$70 million on fortifying existing levees, building temporary levees, monitoring dam and levee safety and other activities, such as providing flood flight supplies to States and tribes, within the Corps' authorities under Public Law 84-99. These actions by the Omaha and Kansas City Districts of the Corps were highly effective in reducing flood damages along the mainstem of the Missouri River.

Following the flood the Corps initiated a variety of post-flood actions. These include both internal and independent external technical reviews of the water management operation, an after action review of the flood flight response, and the concentrated effort to assess and repair key features of the infrastructure that the Corps owns and operates on the Missouri, as well as eligible non-Federal levees under the Corps' Public Law 84-99 program. In addition, we also participated in a review of our reservoir operations by the Government Accountability Office.

The Corps set up an external technical review panel to assess the Corps' operation of the mainstem reservoir system prior to, during, and after the 2011 flood event for the purposes of gaining lessons learned and recommendations to improve future operations. The independent review panel recommended infrastructure investment to ensure that our flood release spillways and tunnels are ready for service and our levees are in good condition. Consistent with this recommendation, the Corps has spent over \$580 million since 2011 to repair Federal and non-Federal infrastructure on the Missouri River including the dams, levees, and channel structures. The bulk of these repairs were completed prior to the 2012 run-off season. However, some repairs, particularly for the large items such as spillway structures and gates are still underway.

The independent panel also recommended that the Corps conduct several studies on the operation of the Missouri River Mainstem System. The 2011 flood was a historic event that provided a new data point to incorporate into the tools used to predict, monitor, and manage the system. The Corps has updated numerous internal technical reports and has partnered with NOAA on three additional reports. These include an attribution study of the 2011 flood, an evaluation of the feasibility of managing the reservoir system for anticipated wet and dry cycles, and a study that is looking at changes of the basin climatology and hydrology since the 1970s.

Post-2011 flood, the Corps has worked with the National Weather Service, the Natural Resource Conservation Service, and States to share existing data and have developed a proposal for com-



prehensive a snow plains snowpack and soil moisture monitoring network for the upper plains.

Since 2011 the Corps has also greatly enhanced its coordination with tribes, State, and local governments during periods of heightened flood risk including monthly basin calls leading up to and during the peak run-off seasons.

Knowing my time has run out, Senator——

Senator ROUNDS. Take another minute, and try to finish up.

Mr. PONGANIS. OK. In September 2014 the GAO issued a report on its review of the Corps' water release decisions and communication during the 2011 flood and the 2012 drought. As part of this review GAO worked with the National Academy of Sciences and convened a meeting of nine experts to discuss the Corps' data, forecasts, and release decisions. These experts concluded that the Corps took appropriate action during the 2011 flood and the 2012 drought given the circumstances but recommended that the Corps evaluate the pros and cons of incorporating new forecasting techniques into its management of the Missouri River system. That evaluation is ongoing and is expected to be completed later this summer.

We are hopeful that the improvements in the run-off forecasting and sharing of critical data will provide even greater lead time for flood events resulting from high plains and mountain snowpack, although they will have little impact on the more typical rainfall driven flooding which is most common in the lower basin. The Corps is also communicating more frequently and more broadly with Federal, State, county, and local officials, tribes, emergency management officials, independent experts and the media to discuss conditions on the ground and current Corps reservoir release plans and forecasts.

This concludes my testimony. Thank you for allowing me to testify about the flooding in 2011 and future operation of the Missouri River Mainstem System. I will be happy to answer any questions you may have.

[The responses of Mr. Ponganis to questions for the record follow:]

Environment and Public Works Committee  
Subcommittee on Superfund, Waste Management, and Regulatory Oversight  
North Sioux City, South Dakota field hearing entitled,  
“Five Years from the Flood: Oversight of the Army Corps’ Management of the Missouri  
River and Suggestions for Improvement”  
March 31, 2016  
Questions for the Record for Witness David Ponganis

\*Please Note: The QFR topic was not something that Mr. Ponganis could answer, therefore the answers were drafted and approved by the HQUSACE.

**Senator Markey:**

1. Mr. Ponganis, in 2014, the Government Accountability Office (GAO) concluded that better snowpack and soil moisture data could improve the U.S. Army Corps of Engineers (Corps) ability to make reservoir release decisions, possibly reducing the likelihood of future flooding along the Missouri River.

And, while Congress in the Water Resources Reform and Development Act of 2014 (WRRDA) directed the Corps to enhance snowpack and soil moisture monitoring in the Missouri River Basin, the GAO found that the Corps has made limited progress.

In fact, the Corps only recently issued implementation guidance, which is needed before the Corps can carry out the congressional mandate.

As you know, Mr. Ponganis, Congress directs the Corps to carry out many essential flood protection and environmental functions, and it’s important that the Corps swiftly release implementation guidance to ensure critical directives are carried out.

- a. Mr. Ponganis, how many WRRDA 2014 sections required implementation guidance? How many sections are still awaiting implementation guidance?

Answer: There are 202 provisions within WRRDA 2014 that the Corps will write implementation guidance for. Guidance is approaching 70 % completion of those provisions.

- b. Please describe the process by which the Corps prioritizes, drafts and releases implementation guidance.

Answer: Upon passage of a Water Resources Development Act (WRDA), the Corps identifies all the provisions that the Corps will write implementation guidance for and assigns a primary lead for developing draft guidance for each of these provisions. In the development of that draft guidance, the lead is responsible for coordinating with subject matter experts at the district, division, and headquarters to ensure that appropriate guidance is prepared. Upon completion of that draft, the guidance is reviewed by policy and legal staff to ensure that the guidance is policy compliant and legally sufficient. Once the headquarters has a final draft, the draft is coordinated with the Office of the Assistant Secretary of the Army (Civil Works) (OASA(CW)) for their review and

concurrence to ensure that the guidance is policy compliant, legally sufficient, and consistent with Administration policies. Upon concurrence by the OASA(CW), guidance is approved at the headquarters and released publicly by posting the guidance on the Corps public WRDA guidance website. Implementation of provisions of WRDA should not be restricted as a result of the guidance not being written.

Priority for writing the guidance is given to those provisions that directly impact Corps policies, procedures and projects or directly affect non-Federal sponsors. Those provisions that have no immediate or substantial impact on Corps programs, projects or policies have a lower priority. Implementation guidance for provisions that require funds to implement specifies that no work will occur until such time that funds are specifically provided for the particular project, program, or activity.

- c. What resources, including the number of headquarter, division and district staffers and staff time, does the Corps dedicate to drafting and releasing implementation guidance?

Answer: WRRDA 2014 is a complex piece of legislation that requires considerable effort to implement. A large effort is needed to analyze and evaluate exactly how the provisions will be implemented. Depending upon the complexity of the provision, a significant amount of staff time at all levels of the Corps can be required to ensure the appropriate coordination is accomplished and the guidance is complete and appropriate.

- d. In your opinion, Mr. Ponganis, how can Congress help ensure that the Corps is able to swiftly release implementation guidance?

Answer: As stated previously, the development of implementation guidance is a time consuming effort that is accomplished with existing resources and funding. Corps and OASA(CW) resources are allocated to this effort to the extent possible without impacting other priority effort.

Senator ROUNDS. Thank you, Mr. Ponganis.

Mr. Ponganis, along with all of the other individuals who will be testifying today, has provided us with a written testimony, and all of the written testimony will be entered in its entirety into the record of this meeting.

[The referenced testimonies were not received at time of print.]

Senator ROUNDS. Mr. Ponganis, section 4003 of the 2014 WRRDA Bill authorized the Corps to coordinate with various Government agencies to create a soil moisture and snowpack monitoring network in the Upper Missouri River basin and maintain high elevation snowpack monitoring sites. However, in a 2015 report the Government Accountability Office found that Federal agencies have made limited progress implementing the monitoring program. What is the status of the soil moisture and snowpack monitoring program? What can Congress do to better facilitate the implementation of its program, and is the Corps willing to take the role of lead agency to implement this program?

Mr. PONGANIS. Senator, we have gotten implementing guidance of that WRRDA section. What that guidance indicates to us is that one, we need to seek additional appropriations specifically. In other words, it was in addition to our normal operations.

In addition, as part of that we would need to ensure that once we help and work with the other forecasting agencies, NOAA, NRCS, USGS, and what kind of additional monitoring is necessary, where, and once those additional monitoring sites would be installed, that those agencies would be responsible for taking over the maintenance and the monitoring activities which we would need to enter. So we are starting that coordination with them on that, and we're hopeful that we'll get future appropriations to do so.

Senator ROUNDS. So in 2014 the bill authorized the Corps to coordinate with the various other Government agencies. We're now in 2016.

Mr. PONGANIS. Yes, sir.

Senator ROUNDS. You're now suggesting that you need additional funding from Congress. Has that request been made at all?

Mr. PONGANIS. So, Senator, the process that we have is we get implementation guidance from our Secretary of the Army's office and through our headquarters' office, we got of—any sections in WRRDA, we got that this fall. So it was too late to enter into anything for the President's budget process for this current—proposed for fiscal year 2017. Now that we have that, we'll engage with the Administration in looking into the proposed budgets for the future years, sir.

Senator ROUNDS. You know, one of the reasons why people up in this part of the country get frustrated is because they see that things don't move very fast when it comes to the Federal Government. You've got folks out here in the audience right now that lived through a flood in 2011. It was at a time—and let me just background this just a little bit. There were folks up and down this Missouri River at that time that understood that we had full reservoirs, that we had snowpack in the mountains. It didn't take a scientist to see that. They knew that we had a lot more snow in

the upper Midwest. Every report out that you could find from commercial sources would have indicated that.

As my memory serves me correct, during March, I believe it was on March 3rd, it was one of those kind of days that you remember. On March 3rd it seems to me that one of the Corps' spokespeople said in an article that was related in the Omaha Herald on that day, that we were going to be just fine that year with regard to maintaining the water levels within the banks, unless it rained. And I don't believe they quite said "unless it rained," but basically unless we had additional moisture, and so forth. That was on March 3rd.

My first thought after looking at that was, is that it's a heck of a way to run a major system right through the middle of the United States, that we would be just fine unless it rained.

And second of all, I live along the Missouri River. I live on the Fort Pierre side of the Missouri just across from the capital city of Pierre. We had moved into our home after I left working as Governor for a period of 8 years. We moved into a new home along the Missouri River, and we could see the levels below the Oahe Dam and the tailwaters of Lake Sharpe. We had record low releases the first week in May, record low releases. I know because we were actually working on the shoreline behind our home. Three weeks later we moved out of our home. People in our entire area of 80-some homes moved out. We did so because we had basically just about a week's notice that something bad was going to happen.

I can understand why folks up here don't refer to it as the 2011 flood. They refer to it as the Corps flood of 2011. In part because they think that there was not enough information provided by the Corps in advance and that the Corps was unprepared to deal with this amount of water coming through which was very large amounts. But it seems like after operating this particular system for more than 60 years, that there would be an adequate way to determine whether or not the amounts of water coming in was more than what we could handle in the mainstem dams and whether or not we might have more than a week's notice below every one of these major facilities with regard to huge releases that all of a sudden had to happen.

We moved out of our home, and I said we were out for 2 months. My wife reminds me, no, it was 63 days. There were a lot of folks out here that were gone, that were out for a lot longer than that, and there was billions of dollars in damage that was done, some of which, I think a lot of people think could have been handled more appropriately if we could have started making releases sooner. It doesn't mean that we could have stopped all the damage that was done, but most certainly it could have been eliminated more if we wouldn't have had record low releases for a month before we had record high releases. You could have averaged it out a little bit. But you can't do that unless you've got adequate information.

We understand that if we had not provided the resources to get it, or if we had not provided the directions, as Congress, to the Corps of Engineers, to maintain or to get adequate information, but the reason why I lay out this is because now, after we've had a direction from Congress that you get in gear with other agencies to actually put together the necessary information to prevent it in the

future, 2 years later you're saying that you can't get it done until we get an appropriation from Congress, and you didn't think enough about it to get it done in this appropriations bill. I don't understand. And so if I'm a little upset, I think there's a whole lot of people out here that are probably more upset than what I am.

Can you just share with us a little bit about why this is taking more than 2 years just to get the original plans done, so you can get the monitoring in place so we don't have this kind of thing because you don't have the information necessary on how to appropriately maintain the water levels in this major structure throughout the central part of the United States?

Mr. PONGANIS. Senator, one, several actions took place immediately after the flood event. We did work with the other agencies. As part of that coordination/collaboration with NOAA and USGS was the emphasis that—the foundation for the WRRDA section that you've identified. So, one, that was a result of a lot of good work that was done prior to WRRDA 14.

Second, we have worked with NOAA to look at flood forecasts. Could we have foreseen it? Are there changes that are occurring? Can NOAA, who we rely on, from the weather—National Weather Service and the forecasting to look and predict earlier on. And those reports of—a couple have been completed. One's still ongoing. So we haven't, in the absence of seeking appropriations for this particular section, we have not stood still, sir. We have tried to do our best working with those agencies and trying to get better. You are totally correct, when operating a major system like this, having information early on is critical.

Another part is we have started, and continue, to this day, with having calls early on, starting in January, with the region, with the forecasting agencies to share whatever information we have as early as we can, sir.

Senator ROUNDS. I think it still comes back down to it should not take 5 years to implement this type of a program, and right now we're talking about years to come yet, unless we can expedite this. Could I have your assurance that the Corps of Engineers would be interested in expediting this process to get this in place as soon as possible?

Mr. PONGANIS. Sir, we'll work with the Administration on trying to implement that section of WRRDA as quickly as we can, sir.

Senator ROUNDS. Very good.

In 2008 the Corps issued a Real Estate Guidance Policy Letter Number 26. This directive required municipal and industrial water users from the Missouri River Mainstem Reservoirs to acquire a water storage contract from the Corps prior to the Corps' issuing an access easement for a pump site. Access easements are needed for all South Dakota water users of the Missouri River to include municipal, industrial, and temporary use for short-term projects for which State permits have been issued.

The Corps' unwillingness to issue access easements affects South Dakotans' ability to manage the public's ability to use water from the Missouri River. Do you plan to continue denying access easements to South Dakotans seeking to use water from the Missouri River?

Mr. PONGANIS. Senator, let me give you the status of where we're at and our direction from the Assistant Secretary of the Army's office. About 2012 we were asked by the Assistant Secretary to produce surplus water reports for the six major reservoirs projects. It was through that process and approval of those reports that would allow us to move forward and enter into contracts with the—with the provision of WRRDA 14 of not charging, and therefore allow the real estate access. One of those reports has been approved by the Assistant Secretary of the Army's office for Garrison. There's still—other ones are under review.

Concurrently, the Assistant Secretary of the Army's office with our headquarters have been pursuing a rulemaking on surplus water reports, Water Supply Act, charging practices, our policy of how to allow for these storage contracts, et cetera. And the reason the Secretary's office was going to pursue that was because when this issue came back up in 2012, it was found out nationwide it was being—there's inconsistencies across this country in how we were implementing that, and the idea was to try to get some consistency. That rulemaking is being done at that level, not in the regional level.

I can't give you—sir, I would be speculating of where they're at. I know they've been working very hard on it. They're very hopeful that something can come out soon so that we can have that. And if it comes out as a rule, for comment by all the States, stakeholders across the country. It's an important issue, as you know, and nationally water supply is a major concern across this country given the recent droughts that we've had.

Senator ROUNDS. Well, based upon the 2014 WRRDA bill, it required the Corps to waive the proposed water charges for contract and surplus water identified in the surplus water reports. Can you tell me the status of the surplus water studies then? Is that the one that you're saying right now that they're still in the middle of trying to do a rulemaking process?

Mr. PONGANIS. They're in the middle of doing the rulemaking. We are implementing congressional direction on—we are not charging per that section of WRRDA, sir.

Senator ROUNDS. So you're not charging for the water that's in storage, but you're still in the middle, as you understand it, and I understand this is not regional, but your understanding is that they're in the middle of proposing the rules to charge or to put together a policy to charge for the water even though Congress has directed that for the next 10 years you not charge for the water in storage. Is that a correct analysis here?

Mr. PONGANIS. So the 10-year moratorium on charging is for water for surplus. There's two acts. One is the surplus water provisions and also then there's the Water Supply Act. And again, sir, I haven't been involved in any details of the national rulemaking to give you any specifics on how that's being addressed, sir.

Senator ROUNDS. OK. I don't think that there should be a charge for that water which flows through. I think that's part of the process that we should have access to. I'll go back down to even the city of Pierre, which is right on the Missouri River, simply trying to get access so they can do irrigation in their park systems. As of yesterday they still had not had a response back simply to get ac-

cess across the Corps land to get in to put in a pump station so that they can access the water, which is part of the free flowing part in the Lake Sharpe area of the Oahe dam. There's got to be a better way to do this.

Currently, Mr. Ponganis, the Corps is currently engaged in a recovery program to replace lost habitat for the pallid sturgeon, the piping plover and the least tern. Can you update us on the status of these plans?

Mr. PONGANIS. Yes, Senator. We are working with the Missouri River Recovery Implementation Committee, per congressional direction under WRRDA 07, that committee was formed, approved by the Assistant Secretary of the Army at the time. We've had an independent scientific advisory panel review all of the current science. We're still looking at the recommendation of the scientists in terms of what actions would be needed or required and life stages of these different endangered species, how best to look at that.

We're right in the middle of that analysis, sir. And the schedule is to work through that analysis, identify potential actions, evaluate those actions and produce a draft environmental impact statement by the end of this calendar year. That would come out for public review, regional reviews so everybody has a chance to look at that. No decisions have been made on what types of actions we would take in the future because we still have to go through that process, sir.

Senator ROUNDS. OK. First of all, let me thank you for coming out for this meeting today. Let me just finish in terms of questions for you today, sir, just asking if there was anything that Congress has not done that they should be doing that we can help with with regard to helping you to eliminate or to absolutely minimize the possibility of a flood like what occurred in 2011 from happening again; I most certainly would invite your thoughts on it.

I can tell you that I was fortunate. We had a city which stepped way up in the city of Fort Pierre and help put together a berm that protected all the homes in our development area. So I'm one of the lucky ones because we didn't have our home destroyed. I would suspect that there are folks here in the audience today who did have their homes destroyed.

And I think the message if nothing else is that this has not been one of those items which has simply been put on the back burner because we had a drought in 2012, and that somewhere along the line, even though sometimes we're not very efficient at the Federal level, we get things done. And that, I hope, is part of what folks come away with is that there truly is an intent to try to fix this problem because one clearly exists. And if there's anything that Congress needs to hear from you about what we need to do to help you in your job to see that it doesn't happen again, I would offer this—you know, a few minutes for you to express that at this time.

Mr. PONGANIS. Well, Senator, again, we recognize this is an extremely important and complex system out here. Your statements earlier about having better information as early as possible, we're exploring those. And we will do everything possible to try to improve upon that in the future. Communication is key as you also mentioned. We will continue to have those early and often regional



discussions of what the system looks like for the coming year, our best estimates, both from a Federal and which allows the States—as well as the public—to comment on what information they may have so we can have a better understanding. So we'll continue to do that, sir, and if we find out anything else that we need we will definitely let you know.

Senator ROUNDS. Thank you. Thank you, Mr. Ponganis. Appreciate it.

Mr. PONGANIS. Thank you.

Senator ROUNDS. At this time I would also like to call up our second panel of witnesses. Our witnesses joining us for our second panel today are Secretary Steve Pirner, Secretary for the Department of Environment and Natural Resources. And Steve, come on up and join us, please, up here.

Chairman Harold Frazier, Tribal Chair of the Cheyenne River Sioux. Chairman, welcome today.

Mr. Jeff Dooley, District Manager of the Dakota Dunes Community Improvement District. Jeff, welcome.

And Mr. Paul Lepisto, Regional Conservation Coordinator of the Izaak Walton League of America. Paul, come on up.

By the way, for anybody that's here or watching, if you have thoughts, you'd like to have something incorporated into this, I will make the announcement at the end of the meeting as well, but any written testimony that you'd like to have presented at this is welcome. We will record it in as part of the records on this, and we will also hold this meeting open for an extra 2 weeks as well. So that as you've heard testimony from the individuals that are up here, and if you'd like to make a public comment on it, a personal contact back in, and you'd like to have it entered into the record, this meeting will actually stay open for a period of 2 weeks to allow for additional comments to be entered into the congressional record as well.

So with that, we will now turn to our first witness, Secretary Steve Pirner for 5 minutes. And before I allow Steve to begin, I just want to say thank you because you're one of the guys that a lot of the other folks from around the country call the dean of the folks that work in the area of environment and natural resources. I know that you worked for me for 8 years when I was Governor, and we most certainly appreciated your hard work and your professionalism. And I most recently asked if he would come up and testify in front of the entire Environment and Public Works Committee, which he did in DC. And Steve was one of these guys that truly understands that DC is perhaps a place that some people like to visit. He doesn't, but he came anyway. And I appreciated that. And once again, I've asked him for the second time now in less than about a month and a half to participate.

So, Steve, with that, Secretary Pirner, would you please go ahead with your statement. And once again, I'd like to limit them to about 5 minutes, but I'm not going to hold you to an exact 5-minute limit. Please, Steve, go ahead.

**STATEMENT OF STEVE PIRNER, SECRETARY, SOUTH DAKOTA  
ENVIRONMENT AND NATURAL RESOURCES**

Mr. PIRNER. Chairman Rounds, thank you very much for holding this hearing here today. My name is Steve Pirner, Secretary of the South Dakota Department of Environment and Natural Resources.

We learned a lot about the Missouri River and flooding in 2011, but today I want to touch on some other problems that you've already touched upon and present some possible suggestions. I want to share with you our perspectives on the surplus water reports and reallocation studies proposed by the Corps of Engineers for the Missouri River reservoirs and again offer suggestions for improvement.

To put our issues with these studies into context, remember that our people and tribes paid a heavy price for the four Missouri River dams in South Dakota. These reservoirs permanently flooded more than a half-million acres of our most fertile river bottomlands. Many citizens and tribal members were forced from their lands, from their homes, and from their communities. The promise of Federal irrigation projects to help offset these losses never materialized.

Then another payment was extracted from us in 2008 when the Corps issued the Real Estate Guidance Policy Letter Number 26 that you talked about. This policy requires municipal and industrial water users to acquire a water storage contract prior to the Corps' issuing an access easement to the Missouri River reservoir for a pump site, but the Corps had no process for issuing the contracts. Therefore the effect of the policy was to place a moratorium on easements to the Missouri River reservoirs.

This moratorium hit South Dakota hard. Out of a thousand miles of Missouri River shoreline, only about 100 miles were on the two short free flowing stretches in the State. Therefore 90 percent of our shoreline became off limits to potential users of the Missouri River water. Midland Contracting was one of the first to find this out when the Corps told them they could no longer pump water used for dust control out of Lake Sharpe. The most vivid example was the Corps' refusing to let another contractor pump water during the 2011 flood.

To develop a process for Policy Letter Number 26 the Corps began Surplus Water and Reallocation Studies under the authority of section 6 of the 1944 Flood Control Act and the surplus water provisions of the 1958 Water Supply Act. We do not dispute the Corps has authorities under those acts, but we strongly dispute the Corps' resulting definition of stored water as being all the water within the reservoir boundaries. This new definition, should it go unchallenged, creates a monumental change to the law and would defeat States' rights to natural flows that by tradition and by law are under the jurisdiction of the States. To better understand natural flows, visualize that reservoirs have stored water sitting on top of a river with natural flows passing underneath. This natural flow of the water represents water that should be under the jurisdiction of the State.

States' rights to natural flows of navigable waters within their borders are constitutionally founded and protected in the Equal Footing Doctrine. Congress acknowledged this States' right in the

first sentence of section 1 of the 1944 Flood Control Act by stating, “It is declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control.” As a consequence of the doctrine and the enacted law the Corps must acknowledge the States’ right to natural flows.

Another concern with the Corps’ studies is one of equity. The Corps has documented the tremendous benefits the reservoirs supply to people throughout the basin— controlled water supplies, hydropower, flood control. Now to require just the upstream States to pay the cost through the stored water fees with people in the downstream States enjoying these benefits at no cost is not fair or equitable. As Governor Dugaard wrote to the Corps in 2012, “To impose all reservoir operation and maintenance costs on upstream States alone adds insult to injury.”

To resolve these issues, South Dakota suggests Congress take the following three actions:

No. 1, reiterate that natural flows through the reservoirs exist and those flows remain under the jurisdiction of the States.

No. 2, make permanent the 10-year waiver of the 2014 Water Resources Recovery and Development Act on water charges for contracted surplus water.

And No. 3, lift the moratorium on pump access easements by rescinding the Corps’ Real Estate Guidance Policy Letter Number 26, and allow users who have obtained State water right permits to pump water without interference from the Corps.

I hope this information is useful to the subcommittee. Thank you again for the invitation.

Senator ROUNDS. Thank you for your testimony, Secretary Pirner.

Our next witness is Chairman Harold Frazier. Chairman Frazier, you may begin.

**STATEMENT OF HAROLD C. FRAZIER, CHAIRMAN,  
CHEYENNE RIVER SIOUX TRIBE**

Mr. FRAZIER. Thank you, Senator Rounds, for the opportunity to be here and to address your committee. I thank you for that.

My name is Harold Frazier, and I’m the Chairman of the Cheyenne River Sioux Tribe. Our reservation is the size of Connecticut. We have two rivers that run through it—the Moreau River and the Cheyenne River. Our reservation is home to four bands of the Sioux Nation. We have nearly 19,000 members that reside on our reservation. Through treaties, executive orders, acts of Congress, case law, United States has a unique trust responsibility to protect our trust assets and our lands. It’s odd that the Federal Government, through the Corps of Engineers, is destroying our lands and our way of life.

I live 12 miles from the mouth of the Moreau River in the community of White Horse, and about 3 years ago we had a flood along the Moreau River. And when you go south, there’s a road runs south toward Ridgeview and on into Eagle Butte. That was flooded. When you go east along the Moreau River toward Mobridge, at about four spots that road was flooded. So the only way out was

to the west toward Timber Lake, but yet 2 miles out of White Horse the water level was right up to the road. So I think that if we ever have another flood, where I live will be completely surrounded except for going north horseback. It is a concern of ours the way the Corps is managing the river.

A lot of our problems that come from the flooding of the Moreau River are what we call the Promise Bridge. This bridge, the original design was supposed to be 140 feet long, longer than what it is, and have an additional 70 feet span on each side of the bridge to accommodate the level of water and sedimentation that would flow from the Moreau into the Missouri. But in 1960 the Corps, through a memo, recommended changes to the design of the bridge that shortened the span of it. This was to save the Government a mere \$100,000. But this bridge, this bottlenecks everything and causes flooding upstream on the Moreau River, not only destroying fertile agriculture river bottoms, but there's a cemetery that belongs to the St. Mary's church that is completely flooded every time it floods the Moreau River.

Another problem is we have a BIA road, Route 3, and it is just constantly eroding, caving in, caving in. The BIA moved it to the north, but now it continues to cave in. Now it's right up to the fence line. So it ain't going to take too much longer before that road is completely into the river.

There was a flooding in 1997, and the tribe met with the Corps to seek help in remediating the damage caused by the flooding, and the Corps' response was, You have to sue us because we have no funds to remediate the situation. So 2003, the tribe and numerous individual tribal members filed a lawsuit against the Corps of Engineers. And in September 2014 the tribe met with the Assistant Secretary Jo-Ellen Darcy and Steven Kopecky in their office to discuss the pending lawsuit, the flooding, and the need to lengthen the span of the bridge, but because of the pending lawsuit Assistant Secretary Darcy would not talk about any settlement options.

And as far as the bridge, we were told that we would be in contact with officials in the Omaha office to seek solutions, but since then we have heard nothing from the Corps about trying to fix the bridge.

We feel that since the Corps built it originally, since the Corps' operation of Lake Oahe is a major factor in our situation, the siltation problem, we believe the Corps has a responsibility to fix this situation by removing the silt and widening the distance or spanning between the bridge columns that are in the Moreau River.

Another issue where—that the Corps has failed the Cheyenne River Sioux Tribe is between 2012–2014, an individual south of the Cheyenne River dug a trench north of the Cheyenne River. When he dug that trench, originally it was 100 feet wide and 2 miles long, and his goal was to route the river. And by him doing that, you know, not only did he alter our boundaries, but he also took approximately about 140 acres of our land.

Back in the 1990s we were in a lawsuit with Homestake Gold Mine because of the mine tailings and so forth coming down into our water intake. And since then a lot of the mine tailings and sedimentation and things like that have kind of subsided. But by this individual digging his trench, disturbing the ground, we have

had samples through our EPA office that have seen a rise of mercury and other contaminants. We did report it to the Corps. The Corps told us in DC that this individual approached them, asked for a permit. They denied it, but he went ahead and did it anyway.

In 1960, when they removed our agency, they replaced a lot of our buildings. And one of our buildings is our administration building with the BIA. Right now, a couple years back, we were moved out of there because of mold and things like that. And we did talk to them about assisting us in any type of way, planning, and so forth. They did tell us in Washington that they would help us with 135,000 and start developing a plan to build a new tribal building, but since then we have heard no response from them.

In conclusion, I want to thank you for the opportunity, and I appreciate any kind of assistance you can to help the Cheyenne River Sioux Tribe and all of our members and our residents, because there's a lot of residents that reside on the reservation that are not members of our tribe. And I thank you for the opportunity.

Senator ROUNDS. Thank you, Chairman Frazier.

Now we will hear from Mr. Jeff Dooley. Mr. Dooley, you may begin.

**STATEMENT OF JEFF DOOLEY, MANAGER, DAKOTA DUNES  
COMMUNITY IMPROVEMENT PROJECT**

Mr. DOOLEY. Thank you, Senator. We all appreciate you bringing up this issue in this area, in this format. As you can see by the turn-out it's a very important issue to all of us.

In preparation for this testimony I drew on my experience as manager of the community Dakota Dunes that's right on the Missouri River and my role in the 2011 flood fight. And I also reviewed transcripts from two congressional committee hearings that were held on this issue along with a Corps document entitled "Review of the Regulation of the Missouri River Mainstem Reservoir System During the Flood of 2011."

I see three major themes that came out of that review. No. 1 is improved communication between the Corps of Engineers and the stakeholders. As the events that precipitated the 2011 flood unfolded from April through May, there was insufficient communication as to the increasing problem of melting snowpack and plains snowpack and the rain events in the upper basin.

By the time the communications were established the release and projections were escalating quickly making it difficult to formulate a response. However, since that time the Corps has taken substantial steps to formulate a regimented schedule of conference calls during the run-off season with Federal, State, local officials, as well as the media and congressional staff to provide updates on climate and run-off conditions as well as reservoir releases and power generation plants.

Additionally, during these calls there was time allotted for questions to be posed by each State, by each local jurisdiction, and they take a significant amount of time to go through that list and provide that opportunity. Had these calls been in place in 2011 I think the local jurisdictions in the State and the stakeholders could have asked questions and challenged some of their assumptions they made that dictated their management decisions.

It should also be noted that in 2011 the Corps was very responsive to our needs as far as preventive measures go, and also during the recovery phase. And in 2014 this area experienced a large flooding event on the Big Sioux River, and the Corps was able to reduce releases from Gavins Point Dam to 10,000 CFS, which really helped the water elevation of the Big Sioux, and it created a manageable situation in some cases.

No. 2, assessing and prioritizing of the authorized purposes outlined in the Corps Master Manual. From a citizen's perspective, the conflict of the authorized uses is commonly referred to as a major impediment to flood control on the Missouri River. A study entitled "Missouri River Authorized Purpose Study" was underway prior to the 2011 event. As I understand it, that progress has been suspended on the study, that which would have looked at each authorized use and kind of prioritize it and have had it discussed. The sometimes conflicting uses can cause a slower response and attention to the flood control.

Third, improved data collection as it relates to plain snowpack and soil moistures. And you mentioned this in your comments during the Corps panel, and while the torrential May rains in the upper basin were a major contributor to the record run-off and difficult and maybe even impossible to predict, the snowpack on the plains and in the mountains were above average and quantifiable. An improved snowpack and soil moisture monitoring system would allow better predictions of known precipitation and the resulting run-off.

The need for improved data collection is documented in the Corps of Engineers' post-event review entitled, "The Upper Missouri Basin Monitoring Committee—Snow Sampling and Instrumentation Recommendations." And as you said, section 404 of the WRRDA 2014 provides for that to improve that, and no actions have been taken. I would encourage Congress to continue to push for these improvements and to maybe set some milestones for its implementation.

Also, I'd like to note that after the 2014 Big Sioux River flood, local jurisdictions found that data collection along the Big Sioux was insufficient to provide accurate water surface elevation projections during that event, and as a result the Dakota Dunes, North Sioux City, and Union County partnered to provide the local match with USGS to implement three new gauges along the Big Sioux River below Akron. Those are in place and are working and are collecting data for a year. So I think that kind of falls under where there's a will there's a way type subject. So with that, again, I appreciate you bringing this issue up in this format, and I will stand-by for any questions.

Senator ROUNDS. Thank you, Mr. Dooley.

We will now hear from our next witness, Mr. Paul Lepisto. Mr. Lepisto, you may again.

**STATEMENT OF PAUL LEPISTO, REGIONAL CONSERVATION  
COORDINATOR, IZAAK WALTON LEAGUE OF AMERICA**

Mr. LEPISTO. Thank you, Senator. Thank you for holding this hearing.

I'm with the Izaak Walton League of America. It's one of the oldest, most established conservation organizations in the United States. We have 43,000 members around the country and 240 chapters. Many of those members live in the States that I work in. I live in Pierre, South Dakota, but I work for the Izaak Walton League in the States of Iowa, South Dakota, and Nebraska. And many of our members hunt and fish and truly enjoy living along the river, and the river plays a major role in the lives of many of our members.

The League strives to look for common sense science-based solutions that work with the river rather than fighting against it. There's no question the Missouri is one of the most altered ecosystems on the face of the Earth. The alterations that came as a result of the 1944 Flood Control Act created the authorized purposes that others have talked about today are interesting because since their inception those authorized purposes have been and will continue to be in direct conflict with each other, one of the reasons why management of the system is so difficult.

The Missouri today is far different than the historic river. Thirty-five percent of the river is impounded in the six reservoirs; 33 percent of it is contained by the artificial navigation channel between Sioux City and St. Louis. And with those changes millions of acres of the river's historic aquatic and terrestrial habitat have been lost or destroyed.

The modifications are very significant. The river was shortened by more than 120 miles between Sioux City and St. Louis with construction of the navigation channel. These changes destroyed most of the braided side channels, the chutes, wetlands, islands, sandbars, backwaters, natural floodplain and riparian forest that historically made the Missouri one of the richest ecosystems on the face of the Earth.

Habitat recovery efforts as have been mentioned are ongoing, but the League members believe that much more needs to be done. Many areas are worthy and in need of habitat restoration due to the high quality recreational, natural, scenic and historic resources that they contain. If they were restored, these areas could once again provide critical habitat for native fish and wildlife species and be a boon for the recreation industry.

The Corps does face a tremendous management paradox. As mentioned, flood control is the only purpose that requires removing water from the six reservoirs. All the other seven purposes require the Corps to hold onto water. Another vexing management issue that we see is that only 53 percent of the basin is regulated by the reservoirs. That leaves nearly half the basin unregulated and subject to regular flooding irregardless of what's in the Corps' annual management plan or any of their management actions.

In the past we've urged the Corps to increase their communication efforts about this fact so more people know that the Corps doesn't and cannot control run-off in the entire basin, and despite their best efforts periodic flooding will always occur on the lower river.

With that we continue also to urge the Corps to always rethink rather than just rebuild man-made flood control structures that have in the past repeatedly failed. We support levee setbacks and

additional river widening projects that would give the Missouri more room to roam in the lower river. This would provide additional flood risk reduction and by reducing the flood stage during high flow events.

The Missouri River Master Manual called for a 3,000-foot floodplain from Sioux City to Kansas City and a 5,000-foot floodplain from Kansas City to the mouth. We've urged the Corps to work with local governments on new zoning ordinances to implement this wider floodplain which would save tax dollars and produce a much healthier river. The incredible dynamics the basin has have been discussed at large already today. The record run-off in 2011 resulted in that prolonged flood with massive damage throughout the basin, but that was quickly replaced by extreme widespread drought in 2012. These dramatic swings demonstrate the urgent need for a much more flexible management approach by the Corps and a much more adaptable management system to what is the actual hydraulic conditions in the basin.

We support updating the master manual that would allow additional in-season adjustments that would accurately match the actual run-off as each year unfolds.

Critically important water management decisions that impact the entire basin should not follow a locked-in-stone policy that's set months in advance of when the actual run-off conditions are realized.

The current review policy of the water and storage happens only in March and July. That determines the navigation support and the navigation season length. It doesn't adequately address the needs of the residents of the basin. Once water, which we feel is the most precious and fragile resource in the basin, is released from the reservoir system, that water is gone forever. The League supports a comprehensive review of the eight authorized purposes to determine what's best for the American taxpayer and for the needs of all the people in the basin and for the river itself.

The river, in essence, is still operating on a 70-year-old business plan, and that review is urgently needed and long overdue.

The river today is vastly different than what was envisioned when the Flood Control Act was drafted in 1944. Some purposes have met or greatly surpassed the original expectations of that Act. Recreation, for example, exceeds estimates by more than 10 times today, while other purposes have fallen way short, meeting only a fraction of their original expectations. A review would streamline river operating expenses and we feel would bring the Missouri River into the 21st century.

To many members of the Izaak Walton League the Missouri River is a national treasure and one of the Nation's most unique rivers. We feel it's an incredible economic engine, that if it's managed correctly for multiple uses, including fish and wildlife and outdoor recreation, the river would create even more jobs, more tax revenue, and additional recreational opportunities for families across the Nation.

I thank you for your time and for holding this hearing.

[The responses of Mr. Lepisto to questions for the record follow:]





THE IZAAK WALTON LEAGUE OF AMERICA

May 4, 2016

Elizabeth "Lizzy" Olsen, J.D.  
Majority Director of Operations  
Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

Dear Ms. Olsen,

Here's the Izaak Walton League of America's responses to Senator Markey's questions following the EPW Subcommittee Hearing held in North Sioux City, SD on March 31, 2016.

Please let me know if you have any questions or if you need additional information.

Thank you.

**Senator Markey:**

**1. Over time, as hydrological, coastal, and flood control engineering has advanced, flood protection and environmental stewardship have increasingly become intertwined. We are finding new and better ways to use natural and nature-based features to enhance flood protection.**

**a. Mr. Lepisto, please describe a few ways that the Corps can use natural and nature-based features to both improve the environment and enhance flood control along the Missouri River?**

The League has continued to encourage the U.S. Army Corps of Engineers to always look outside the box and re-think rather than just re-build man-made flood control structures that have repeatedly failed along the river. We believe it's time to look at more non-structural alternatives to levees.

We support increasing levee setbacks and completing additional river top widening projects that give the Missouri River more room to roam. This would provide additional flood risk reduction to the lower basin and reduce the stage of the river during high flow periods.

The Missouri River Master Manual calls for a 3,000 foot floodplain from Sioux City to Kansas City and a 5,000 foot floodplain from Kansas City to the mouth near St. Louis. The League has repeatedly urged the Corps to work with local governments on new zoning ordinances that would implement this wider floodplain. Implementing this action would continually save taxpayer dollars and produce a healthier river by reestablishing needed floodplain connectivity.

Reconnecting the floodplain will naturally produce and provide needed habitat for fish and wildlife thereby aiding recovery of threatened and endangered species. The naturally created habitat will also provide increased recreational opportunities for families in the basin. That boost from the recreation industry will be a positive economic impact and create many year-round jobs.

The League also supports efforts to address river bed degradation, or down cutting, of the Missouri River. River bed degradation is having a substantial negative impact on both public and private infrastructure, fish and wildlife habitat, and recreational opportunities. River bed degradation has also led to a drop in ground water elevations along areas of the lower river. This is impacting water wells and the functionality of nearby wetlands.

**b. How could the Corps manage the Missouri River Basin to fulfill the authorized and often competing missions?**

The Missouri River Basin is incredibly dynamic. That has been very evident the last several years. Record runoff in 2011 resulted in prolonged flooding which caused massive damage throughout the basin. That record runoff was quickly replaced with extreme wide-spread drought conditions in 2012.

This huge hydrological swing demonstrates how quickly basin conditions can and do change. The League believes these dramatic swings demonstrate the urgent need for a much more flexible approach to the day-to-day management of the Missouri River.

We firmly believe management policies must be much more adaptable to the actual basin hydrologic conditions. We support changing and updating the Missouri River Master Manual to allow additional in-season adjustments. This would enable the Master Manual to accurately match the actual high or low runoff as each year unfolds.

Critically important water management decisions, that ultimately impact all the residents of the basin, should not follow a "locked in stone policy" set months before the actual runoff conditions are realized.

Millions of people in the basin depend on the Missouri River and its resources for their livelihood and as an important component to their quality of life. That human demand, and the overall health of the river itself, require a much more modern, adaptable approach to water management than the current Master Manual policies permit.

The current Master Manual review of water in storage in the reservoir system to determine the amount of navigation support and the length of the navigation only in the months of March and July, as the current policy calls for, does not adequately address the needs of residents in the basin. Basin conditions change rapidly both wetter and drier. Additional timely, periodic reviews by the Corps throughout the spring and summer months are urgently needed to accurately determine the proper amount of releases from the reservoir system each and every year.

The League would also enthusiastically support a comprehensive review of the eight Missouri River Authorized Purposes identified in the 1944 Flood Control Act (FCA). The purposes need to be thoroughly reviewed in terms of what is best for the American taxpayer as well as the needs of all the people in the entire Missouri River basin. This review should incorporate today's economic values and priorities, instead of being limited to those included in the original FCA.

The Missouri River is still operating on 70 year old business plan. This review of the eight authorized purposes is urgently needed and long overdue for the American taxpayer and for the health and future of the river itself.

The Missouri River basin is very different today as to what was envisioned when the FCA was passed. Some of the authorized purposes meet or are greatly surpassing original expectations. For example the recreation industry today exceeds original FCA estimates by more than 10 times. Other purposes, however, fall well short of original expectations. Commercial navigation today is less than one-tenth what the FCA estimated it would be, yet the Corps' water

management continues to favor commercial navigation even though little or no barge traffic exists on the lower river. This dramatically demonstrates why this review needs to be fully funded, completed, and recommendations from it sent to Congress to make long over-due changes in the FCA.

A comprehensive authorized purpose review would be a very wise and prudent investment, one that would produce savings for the taxpayer in the future. A review and any subsequent changes could streamline future Corps operational expenses and finally bring Missouri River management into the 21<sup>st</sup> century.

The League also commends the Corps for engaging with the National Oceanic Atmospheric Administration, the National Weather Service, the Natural Resource Conservation Service, and other federal, state and local agencies to increase monitoring of plains and mountain snowpack water content, soil moisture, and frost depth to more accurately determine the actual annual runoff.

We strongly urge Congress to provide robust investment in modern stream, snow pack, soil and frost level gauges to accurately monitor flows and soil moisture levels to help provide more precise runoff forecasts in the Missouri River basin. We also encourage the Corps and other agencies to incorporate data dealing with climate change and its impacts, both wet and dry, when completing future runoff scenarios and developing their Annual Operating Plan.

To improve annual water management within the basin, the League encourages the Corps to utilize every tool available. Tools that consider hydrological and economic factors such as water supply, collection, storage and diversion, withdrawal, consumption and water requirements in the river basin. The Corps needs to implement medium and long-term water management planning in order to avoid potential conflicts over water management for the basin.

**c. Mr. Lepisto, what are some of the environmental impacts of the Corps' Bank Stabilization and Navigation Project (BSNP), and what steps can the Corps take to mitigate potential environmental harms?**

The League believes the Bank Stabilization and Navigation Project (BSNP) needs to be thoroughly evaluated. The BSNP is maintained by a series of wing dikes and revetments which have created a "self-scouring" channel on the lower 735 miles of the river. The League, along with many others, believe the BSNP is actually over-engineered and is a major contributor to bed degradation. We would like this issue closely examined to see what would happen if some of the BSNP structures were removed. Would that effort allow areas of the river to start to heal itself?

Much of the current Missouri River Recovery Plan's efforts have occurred within the area of the BSNP to mitigate for the destruction of over 522,000 acres and 120 river miles between Sioux City and St. Louis. The League encourages the Corps to continue implementing recovery efforts in this area and to strive to reconnect portions of the lower river with its historic flood plain.

The League also urges the Corps to consider other areas along the river, as authorized in Section 3176 of the Water Resource Development Act (WRDA) 2007, for recovery efforts. We feel this will improve recovery opportunities for the listed and other imperiled native species by putting recovery projects across a much wider geographic area and increase public support of the recovery efforts by having projects on the ground in multiple states.

The loss of hydrologically connected wetlands along the Missouri River has also impacted the historic migration corridor for waterfowl and other bird species. The League supports restoring the habitat needed to attract and maintain migrating bird populations on the lower river. This will

return waterfowl hunting and birdwatching opportunities and provide significant economic benefits throughout the region.

Wetland losses along the river have contributed to increased water quality problems. This adds to water treatment costs and further complicates species recovery. League members, especially those in Iowa, Nebraska and South Dakota, want the river's natural attributes, including wetlands, backwaters, side channels, chutes, and islands, to return to portions of the lower river. These areas are capable of producing both long-term ecological and economic benefits.

The League supports the Corps' efforts to restore some of the natural features and dynamics of the Missouri River. We encourage the Corps to continue to acquire land from willing sellers to develop additional shallow and slow water habitat. However, to achieve the full recovery potential, revetments placed across the openings of previously constructed chutes need to be reopened to allow the chutes to function. Re-opening chutes that have been closed or have silted in will provide some sorely needed shallow and slow water habitat for many native fish and wildlife species along the lower river. The restoration efforts will have positive impacts on all fish and wildlife throughout the region.

Studies conducted by the U.S. Fish and Wildlife Service and other agencies show that over twice as many fish species are utilizing the created shallow and slow water areas compared with the section of the river in the navigation channel. A Corps' study also shows that the Emergent Sandbar Habitat (ESH) projects have had tremendous response from nesting least terns and piping plovers. These habitat restoration projects are working with the river - not against it.

The recovery projects have been a boon for the river. Anglers, hunters, boaters, birdwatchers, and many others have been using these areas proving the old adage "if you build it, they will come." In a recent report, the Missouri Department of Conservation and the Nebraska Game and Parks Commission concluded recreational spending provides \$68 million in annual economic impact to areas along the Missouri River between Yankton, SD and St. Louis, MO. With more of these projects, even more people will come to spend time on the river.

In addition to the economic boost from outdoor recreation, restoration projects provide broader economic benefits throughout the entire region. These projects involve restoring and creating habitat for terns, plovers, and pallid sturgeon in the basin. To perform this work, the Corps contracts with local construction companies. This creates or maintains jobs that inject money into local economies through purchases of materials, fuel, food and lodging. With robust funding for the MRRP the Corps could readily implement more of these important economic and ecological restoration projects.

To successfully complete necessary recovery plans, the League supports fee title acquisition of land and, if needed, the use of conservation easements from willing landowners. We believe fee-title acquisition should be used when major restoration work is needed to improve the ecological function of the river or when public access is anticipated or desired. We urge Congress to appropriate the needed funds for the Corps to get back on track with the habitat mitigation effort outlined in previous WDRA's for areas in the lower basin.

The League also is in favor of the Corps working on restoration projects in cooperation with state agencies, including the Iowa Department of Natural Resources, the Nebraska Game and Parks Commission, and the South Dakota Department of Game, Fish and Parks. The Corps should also look for additional support through other partnerships and volunteers.

We want to see more recreational and educational opportunities in the new recovery plan. Recreation should be compatible with wildlife but could include canoeing, kayaking, boating,

fishing, hunting and hiking trails. This will encourage more use by schools, scouts, groups and families that want to learn about and enjoy the nation's longest and most historic river.

The members of the Izaak Walton League of America believe the Missouri River is a national treasure. It's one of the nation's most unique rivers, one we feel is well worth protecting and enhancing for this and future generations. The League believes a healthy Missouri River will provide benefits to everyone in the basin and beyond. It's an incredible economic engine that, if managed correctly and for multiple uses including fish and wildlife and outdoor recreation, would create even more jobs, more tax revenue for local and state governments, and additional recreational opportunities for families not just along the river, but across the nation.

The League thanks you for your time and consideration.

Respectfully submitted:



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Senator ROUNDS. Thank you, Mr. Lepisto.

I've got a few questions, and I'll just work my way down the line and around here, and then we'll kind of go from there.

Mr. Pirner, Secretary Pirner, I would like to ask you about Policy Letter Number 26. You stated that the Corps has no process for issuing water storage contracts, and the result has been a moratorium on access easements to the Missouri River reservoirs. I understand that there have been applications to the Corps for access easements. Is the Corps responsive to these applications, or has the Corps been uncommunicative with the State on these issues?

Mr. PIRNER. Senator Rounds, I think the Corps has essentially—they've communicated their denial of those easement requests, pretty much. The only one that I know of that's still in play is the city of Pierre recently requested an easement access to put in potentially some pumps so that they could irrigate some of their green space, parks, and so on, and the capital campus that the Corps did respond back to and said they wanted more information. Since that time the city has responded with additional information, and that's where that matter lies.

Senator ROUNDS. So as of yesterday they had not gotten a response back yet?

Mr. PIRNER. That would be my understanding, correct.

Senator ROUNDS. What impact does the Corps' unwillingness to issue access easements have on municipal and industrial water users?

Mr. PIRNER. Senator, the way—as I said during my testimony, essentially anybody, any new user of Missouri River water has been pretty much shut off. And the reason, again, is because in South Dakota, we've got four reservoirs. Just about all of our shoreline on the Missouri River is in one of those reservoirs. And so by not draining an access easement to the reservoir, we're shut off. The only place that we don't have a reservoir would be those two free flowing stretches which are down in this part of the State.

Senator ROUNDS. I think just in terms of laying out the frustration the folks in this part of the country get once in a while, I had anecdotal information from a contractor who actually, during the flood of 2011, they were trying to do some work on the boat ramp, which was above the reservoir. And the boat ramp enters—it's on Corps land. And my understanding is is that they simply wanted to get water out of the flooding Missouri River in order to do the compression and so forth on the boat ramp, and they were denied and told to go around down below the dam and get it out of the free flowing portion of the river. Is that correct? Am I correct on that?

Mr. PIRNER. That would outline relatively closely with the example that we heard as well.

Senator ROUNDS. Doesn't sound like South Dakota common sense to me.

Mr. PIRNER. No, sir.

Senator ROUNDS. Thank you. Secretary Pirner, the Surplus Water Reallocation Studies that are being undertaken by the Corps, the Corps is proposing to change the definition of stored water as being all the water within the reservoir boundaries. How does this definition run contrary to the historical constitutional in-

terpretation of States' authority regarding water rights? Are you aware as to why the Corps is making this change?

Mr. PIRNER. No, sir, we are not. As I talked about in my testimony, there's really two legal bases for the States having rights to what I call natural flow of water. First is that Equal Footing Doctrine. When every State has been admitted to the Union, every State has been granted the same rights by Congress. One of those rights is the rights to the navigable waters and groundwater within its borders. And then as I talked about in the section 1 of the 1944 Flood Control Act, this very issue, if you go to John Guhin's South Dakota Law Review, I think you knew John, he was an Assistant Attorney General, did a lot of work on some of the litigation that's been pursued over the years with the Missouri River. He's put together a probably—he's passed away now, but this is probably one of the most complete reference documents on the "Law of the Missouri" is what he titled it. And he talks in there about this very issue about States' rights being a part of the 1944 Flood Control Act and the amendments that were made to protect those rights. And again, section 1 of the 1944 Flood Control Act talks about specifically that Congress recognizes the interest and rights of the States in the development of the watersheds within their borders, and likewise their interest in rights in water utilization and control which to me is directly speaking to the prior—or the appropriation process that we use here in South Dakota to allocate rights to the use of the water to the public.

So I think there's a clear basis for the State to have the right and the jurisdiction over the natural flow of the Missouri River; the definition that the Corps has proposed through these studies doesn't mention natural flow. Basically it says it's all the water. And we strongly, strongly disagree with that because we think that—I mean, we've been issuing water rights out of the Missouri River and the reservoirs for years. And another Federal agency, the Bureau of Reclamation clearly, clearly acknowledges—they manage Federal reservoirs as well. They clearly acknowledge the States' rights to natural flows. All of a sudden the Corps comes out with this new policy that natural flow is absent from the discussion, and we're going like, Where is our water? Where did it go?

Senator ROUNDS. By reference, we will also acknowledge and enter into the record Mr. Guhin's work—

Mr. PIRNER. That would be an excellent addition, yes, sir.

[The referenced information was not received at time of print.]

Senator ROUNDS. Thank you.

Chairman Frazier, your testimony says that you filed your lawsuit against the Corps in 2003 and that it has since been referred to the U.S. Department of Justice Environment and Natural Resources Division. Is it correct that this lawsuit has now been pending for over a decade, that the Corps has made no progress in attempting to settle this issue?

Mr. FRAZIER. Yes, that's correct. The only settlement offer that they offered to us was they wanted us to grant them a flowage easement which a lot of our members disagree with because they shouldn't have a right to flood our lands. You know, and like I mentioned, and what I've seen living along the Moreau River all my life, you know, it's just slowly going further, further back west

into the Moreau River. And I recall at one point I watched a documentary on a dam such as the Oahe Dam, and you know, I know the purpose of the Flood Control Act was to control flooding downstream, but it says as years went by—goes by, probably 40, 50 years, these dams are going to start causing problems upstream. And I think we're at that stage now. You know, at Cheyenne River we got, you know, a lot of our—I just seen a lot of good hay bottoms just eroding away, just going into the river, river widening, a lot of siltation. It's just a big problem, but ...

Senator ROUNDS. Chairman, on the Moreau, for those folks that aren't familiar with this area, it's an area which flows on the west side of the Missouri River into the Missouri River, and the Moreau is one of the primary tributaries into the Missouri River there. But the dam—or I guess I can almost call it the dam, but it's the Promise Bridge that goes across Moreau. I've been there. I've seen it. And what they've done is is they've moved out, they've shortened the span. And in shortening the span they had to get to where the span would begin, and basically what they've created is a semi-dam there where the water can't get through the trestles underneath the dam, and so it backs up into the areas that you identified, including the cemetery. And my suspicion is as close-knit as everybody is in our parts of the country, you probably have relatives that are buried there as well. If nothing else, if we could get the Corps to work to resolve the issue surrounding the Promise Bridge and to get that area resolved, so that we didn't have water backing up behind it, that would make a major cause of concern for the members of your tribes, they would at least see something coming from the Corps to try to eliminate some of the problems that are being caused by that construction project. Fair enough?

Mr. FRAZIER. Yes. Yes. If we can get that bridge resolved, expanding it or cleaning some of that siltation near it, I think that would greatly improve the lives, you know, of our people along the Moreau River.

Senator ROUNDS. Thank you, Mr. Chairman.

Mr. FRAZIER. Thank you.

Senator ROUNDS. Mr. Dooley, in your testimony you say that the conflict of authorized uses is commonly referred to as—let me slide back in a little bit because I think part of what you suggested here today was truly a chance to find some common ground with the Corps. And what you indicated is is that after the flood in 2011 that you found that the Corps stepped in and that they were responsive to the emergency needs at that time. Fair statement?

Mr. DOOLEY. That's fair.

Senator ROUNDS. OK. Since that time you've also indicated that the communications that have been provided have been helpful in terms of maintaining the ability to get advice back and forth. And have they been responsive to the concerns that you and the community down here have laid out to them?

Mr. DOOLEY. Thank you, Senator. You know, my experience with the Corps as it relates to Dakota Dunes is we've always been able to get the information we need. These conference calls are a really great forum for them to put out the information that they're going off of, and it allows the stakeholders, which there's a lot of expertise throughout the stakeholder community, allows them to ask



questions and challenge some of the things that the Corps are doing with the river. So in that aspect I think the communication has been very good. The question and answer part of those conference calls are good. And outside of that, any questions that I have regarding the Missouri River I can pose to Ms. Farhat and her staff, and I've always been able to get a good response on that.

Senator ROUNDS. OK. How about when we talk about the suit and the issues surrounding that; you indicate that you put together a team here that actually helped to provide for the hydrological metering information, and so forth. Can you share a little bit about how you worked that, and did you need permission from anyone to do that?

Mr. DOOLEY. Well, after the 2014 Big Sioux event, the State Lieutenant Governor Michels came down, and we all met and compared notes, and it became apparent to us that one of the problems were the projected levels of the Big Sioux River were off. And as we looked a little bit further, it came to our attention that one of the reasons is there weren't enough river gauges on the Big Sioux River below Akron, I believe. So we talked about it between the communities of North Sioux City, Dakota Dunes, and Union County, and worked with the USGS to get those installed and operational. And to do that we had to pay roughly half of installation costs, capital costs, and now we pay roughly half of the operating costs moving forward here in about a year.

Senator ROUNDS. OK.

Mr. Lepisto, according to the South Dakota Game, Fish and Parks, recreation on the Missouri River provides more than \$100 million in economic benefit to the Dakotas and Montana. In your testimony you say that more people should have increased access to the river for recreation such as hunting and fishing as well as increased educational opportunities for families. What are the recreational access issues and limitations that face recreational users seeking to utilize the river today?

Mr. LEPISTO. Senator, as you're well aware in your 8 years as Governor of the State of South Dakota, the upstream States, during periods of extended drought, have spent millions, literally millions of dollars chasing water to provide recreational access on the reservoirs in South Dakota, Nebraska, North Dakota, and Montana when the levels are down for an extended period of time. The ramps either have to be greatly extended, which in some areas is not physically possible. So then those boat ramps and access facilities have to literally be relocated to an area that would facilitate recreational access near that area, but you have to put in the parking area, everything that goes with it, all the infrastructure that goes with it. When the reservoirs come up, all that work and money spent is literally under water again. So a management philosophy that would take that into consideration and make sure that the reservoirs by their nature go up and down, and with the management practices they do go up and down, but it's the drastic 30- and 40-foot drops in the big three; Lake Oahe, Lake Sakakawea, and Fort Peck in Montana that cause these problems and prohibit recreational access.

We have the same issues with recreational access, the lack of facilities for people to get to the river and on the river below Gavins

Point. I mentioned it in the written testimony I submitted that the Nebraska Game and Parks Commission and the Missouri Department of Conservation did a study on recreational spending from Gavins Point to St. Louis, and it came up with about \$68 million in annual recreational spending. With more access and more facilities on the lower river, I think you could put at least a one in front of that 68 million and have that much more recreation on the lower river if those facilities and access sites would be available.

Senator ROUNDS. Mr. Lepisto, you stated in your testimony that we should consider non-structural alternatives to levees. Can you tell us what these alternatives might be and how they would differ from the current levees used by the Corps?

Mr. LEPISTO. As I mentioned, Senator, in the testimony that the lower river is struggling to reconnect itself to its floodplain. If you look at the old maps through USGS or the Missouri River Institute at the University of South Dakota and see where the Missouri River used to run and the old side channels, chutes, backwater areas, the oxbow lakes, all of those have been cut off through the construction and ongoing maintenance of the bank stabilization and navigation project. We've been striving for years through this—the program I work with with the Izaak Walton League to encourage more reconnection, hydraulic connection to those old areas where those areas would be of benefit for the fish and wildlife species, also a boon for recreation, but they'll provide human benefits because that's going to take the crest off of the high-flow events. It will give floodwaters a place to go during high-flow events and so the human impact would be positive. We not only have increased recreation, increased fish and wildlife habitat, but we would have additional lower river storage areas for floodwaters during times of high flow or high run-off events.

Senator ROUNDS. I have one more question. I'm going to begin it with Secretary Pirner, but I would also open it up for all of the panel as well. Secretary Pirner, a 2014 GAO office report concluded that the Corps would benefit from increased and updated soil moisture and snowpack monitoring program to help the Corps better predict potential flood conditions. Do you feel that the increased monitoring would be enough to prevent future flooding, or should the Corps do more to prevent future floods from occurring?

And once again I would open this up first of all to Secretary Pirner and then anyone else who would like to have a thought in terms of the monitoring systems that we thought we were in the middle of working on, and what we've heard today has basically not gone very far so far. This is now 2016, and the flood occurred in 2011. The authorizations were completed in 2014. But Secretary Pirner, your thoughts on the monitoring system and its need.

Mr. PIRNER. Senator, I think the thoughts that went into that language in the 2014 WRRDA bill, I think the thoughts that went into that monitoring system that was proposed by Congress and approved by Congress will do the job, are adequate. I think what remains to be done, as you've pointed out today, now we need to do it. So the thoughts are there, and they're right, and they'll work, but now we need to put those thoughts into action.

Senator ROUNDS. Anyone else? Mr. Dooley.

Mr. DOOLEY. Senator, the major data component I think for managing the Missouri River is trying to figure out how much water ends up running into it, and to do that we need to make sure that the Corps has the adequate data available and the most comprehensive data available. I think from my perspective these measuring tools are absolutely vital for the best management practices of the Missouri River, and to try to at least minimize or eliminate flooding. I don't think you'll ever eliminate it, but to minimize flood impacts in the future. So someone needs to really make sure that this is followed through on and that that's implemented.

Senator ROUNDS. Mr. Lepisto.

Mr. LEPISTO. Senator, ever since the 2011 flood the League in its comments to the Corps at their twice annual, annual operating planned meetings, in written comments and also at the meetings, we've urged them to as quickly as possible implement a monitoring system working with other State and Federal agencies so that knowledge and that data can be gathered accurately and quickly, and then most importantly shared with the stakeholders and residents of the basin so we know what the moisture content is of the snowpack that's on the plains, and especially the water content of the snow and the mountains. And we are as disappointed as you are that 5 years after that initial attempt to have this done we're still waiting for it to be implemented. So we would urge Congress, and we have urged Congress in letters on the annual budget request to provide the funding for those measuring devices and for that technology. To date the funding has not been there.

Senator ROUNDS. Mr. Chairman.

Mr. FRAZIER. Yes. Thank you. I think it would be a good thing for them to implement. I mean, that way there we could be prepared for what's going to be ahead of us. Kind of like what I see is what you said about, you know, the community of Fort Pierre, so we're ready to take whatever measures if it appears there's going to be flooding. And I agree with Mr. Dooley here that that's something we probably can't ever control, but, you know, at least minimize it and be prepared if it does happen. So I think that it is crucial for the Corps to have these monitoring devices implemented. I think it's time for them to start taking action. Maybe quit building a bomb for Iraq and use that money to pay for this.

Senator ROUNDS. Gentlemen, I just want to say thank you very much for you taking your time today to come down here to participate with us in this—in this hearing. Once again, I'd like to thank all of our witnesses for taking this time. The record will be open for 2 weeks which would bring us to Thursday, April 14th.

Let me close with this: I've heard some things today that I—that I had not heard before. I was not aware that the Promise Bridge had been under item of discussion for as long as it has been, for more than a decade. I know we did not get into the issue of the tribal building in Eagle Butte, but it was—originally it was moved from down on the floodplain, and when the Oahe Reservoir was backing up, it was one of the areas which was moved, and the Corps built a different facility for you up in Eagle Butte, which was then identified as having mold in it. It was not usable. You had to move out of that. And I know you've been working for some time

now to find a way to coordinate with other Federal agencies to be able to put together other resources to have a gathering facility.

Once again, you've been frustrated, Mr. Chairman, with that. I will follow up with you. That is part of our written record, although we did not take much time to talk about it here publicly, but it is part of the written record. We would be happy to work with you on finding a way around that issue.

Mr. FRAZIER. Thank you.

Senator ROUNDS. The funding request, which we've talked about here, I was disappointed to find out that, No. 1, that there was, according to the Corps today, a lack of funding for this. I thought we would have studies completed and recommendations being made after this event in 2011. To a lot of us it's a very serious issue that occurred then.

And at that time I think the Corps feels like they were off guard and their response was is that they didn't have the information available to make an accurate decision at the time and that it caught them off guard because a lot of it was late arriving moisture and that they've indicated that if they had these additional monitoring systems in place that they could prevent that.

Same thing could have occurred this year, now 5 years later. I think it shows that we need to expedite the process of getting the review completed.

It surprises me that they did not include it in their request to the President's budget again this year. If that was the case, most certainly that means that we will take it under consideration and find out what it is they need, but until they get a request made, until they get an estimate of what they've got to do with the proposal, it's pretty tough to put the money in the budget it would seem to me. So the first thing is is to get the doggone report done. And after 5 years I think it should be done.

So we're going to put some pressure on the Corps, and we're going to expect some time dates. One thing I've learned in Washington, DC, folks, is is that to a lot of folks in Washington the result is is when you get a report or the result is is when you get a committee hearing rather than getting an actual something done. And results are what counts. And I can just share with you that there is a growing number of individuals who work within the U.S. Senate that understand that people of this State, people of this region expect results, not just studies. And you begin with a study, but you've got to have the results. And I think that's one thing that we will commit to you is is that we're going to get some results, one way or another. That's our job.

With that, I will repeat that the record will be open for 2 weeks, which brings us to Thursday, April 14th. Those individuals who are out here that have heard something that they would like to comment on, your written comments are welcome, and you do have 2 weeks in which to provide them to us. Members of our staff are up here and around the room; touch base with them. They will give you an appropriate way in which to get those items entered into the record. This hearing is adjourned.

[Whereupon, at 2:35 p.m. the hearing was adjourned.]